



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No: 8846-16
OCT 10 2017 /8379-92

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USMC,
XXX-XX [REDACTED]

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 3 Sep 14

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) BUMED Ser M34/17UM34146 ltr of 12 Jul 17

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that the characterization of his other than honorable (OTH) discharge be changed in light of current guidelines as reflected in reference (b). Enclosures (1) through (4) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 July 2017 and, pursuant to its regulations, a majority determined that the partial corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion (AO) furnished by the Bureau of Medicine and Surgery, dated 12 July 2017, a copy of which is attached in enclosure (4).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 19 October 1965. The Petitioner deployed to Vietnam on 30 March 1966. He was trained to be an anti-tank assaultman and engaged in 10 combat operations during this period, ending April 1967. While deployed, he killed Vietcong men, women and children and witnessed the injury and a death of American Marines. On 30 January 1967, he received a shrapnel wound in the mouth; he was hospitalized for a week and earned a Purple Heart. About two months later in April 1967, he returned to the US to initiate divorce proceedings.

d. For a time Petitioner served without disciplinary incident, but on 13 July 1967, he was in the hands of civil authorities for suspicion of armed robbery. By 28 August 1967, he escaped. On 10 October 1967, he was back in the hands of civil authorities and convicted of armed robbery. The sentence imposed was confinement at [REDACTED] State Prison [REDACTED] for not less than one year and not more than 15 years.

e. Subsequently, he was notified of pending administrative separation by reason of misconduct due to conviction by civil authorities at which time he waived his procedural rights to consult with legal counsel and to present his case to an administrative discharge board (ADB). His commanding officer recommended discharge under other than honorable conditions (OTH) by reason of misconduct due to civil conviction. The discharge authority approved this recommendation and on 4 April 1968, he was discharged. On 18 February 1976, the Naval Discharge Review Board (NDRB) reviewed the Petitioner case and found that the characterization of the discharge was equitable and consistent with the characterization of discharge given others in similar circumstances. No relief was approved. On 1 September 1988, Petitioner received a psychological evaluation and was diagnosed with PTSD. In 2014, the Veterans Affairs found Petitioner to be "insane" during his in-service armed robbery therefore, not responsible for his actions at the time.

f. Enclosure (4), an advisory opinion (AO) furnished by the Bureau of Medicine and Surgery (BUMED), stated, in part, that the record indicates the Petitioner experienced combat related traumatic events. After enlistment Petitioner engaged in no misconduct until returning from combat in Vietnam. There are no in-service medical records. Post-service medical records indicate the Petitioner suffers from symptoms consistent with a PTSD diagnosis. Based on the preponderance of the evidence, it is the considered medical opinion that the Petitioner suffered from a mental health condition at the time of service that interfered with his judgment and led to an undesirable discharge

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

The panel reviewed his application under the guidance provided in reference (b), Secretary of Defense Memorandum of 3 September 2014, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans

Claiming PTSD." Specifically, the panel considered whether his application was the type that was intended to be covered by this policy.

The purpose of the Secretary of Defense memorandum is to ease the process for veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases." The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" PTSD. The memorandum further explains that since PTSD was not previously recognized as a diagnosis at the time of service for many veterans, and diagnoses were often not made until after service was completed, veterans were constrained in their arguments that PTSD should be considered in mitigation for misconduct committed or were unable to establish a nexus between PTSD and the misconduct underlying their discharge. In this regard, the Board initially notes Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on Petitioner's evidence as reflected in his medical and mental history documentation, psychological evaluation of PTSD and the BUMED AO. Further, the Board concluded that the PTSD was a causative factor in Petitioner's misconduct; this evidence led the Board to reasonably conclude that the PTSD condition existed at the time of his discharge and subsequently resulted in his OTH discharge. After carefully considering all the evidence, the Board decided that Petitioner's diagnosed PTSD should mitigate the misconduct he committed while on active duty as this condition outweighed the severity of the misconduct.

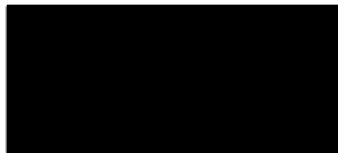
The Board determined that no useful purpose is served by continuing to characterize the Petitioner's service as OTH, and recharacterization to a general (under honorable conditions) characterization of service is now more appropriate. Further the Board felt that due to Petitioner's preservice arrest and the severity of his civilian convictions, a fully honorable characterization of service is not warranted.

In view of the forgoing the Board finds the existence of an injustice warranting the following partial corrective action.

RECOMMENDATION:

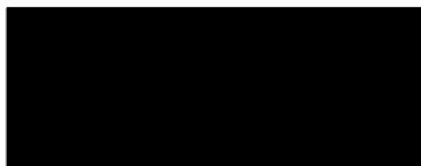
- a. That Petitioner's naval record be corrected to show that on 4 April 1968, Petitioner's characterization of service was "general (under honorable conditions), the narrative reason for separation was "secretarial authority," the SPD code assigned was "JFF."
- b. That Petitioner be issued a new DD Form 214.
- c. That a copy of this Report of Proceedings should be filed in Petitioner's Marine Corps record.
- d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 4 October 2016.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was presented at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



Executive Director